

AMENDED IN SENATE JUNE 22, 2011

AMENDED IN ASSEMBLY MAY 23, 2011

AMENDED IN ASSEMBLY MAY 17, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 527

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to amend ~~Sections 1090 and~~ *Section 1091* of, *and to add Section 1090.5 to*, the Government Code, relating to public officials.

LEGISLATIVE COUNSEL'S DIGEST

AB 527, as amended, Roger Hernández. Public officials: financial interests.

Existing law prohibits Members of the Legislature, and state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law defines what is a remote interest in a contract that does not present a prohibited conflict of interest under these provisions. Existing law authorizes a body or board to make a contract that involves a remote interest of a member of the body if, among other things, the remote interest is disclosed to the body or board and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest. Violation of these provisions is a crime.

This bill would additionally require that the remote interest be disclosed at a public meeting of that body or board and would require a statutory basis for classifying the interest as a remote interest to be identified. By increasing the scope of actions that constitute a crime, this bill would impose a state-mandated local program.

~~This bill would also prohibit an officer or employee, as defined, of the state, a county, district, judicial district or city, or any city officer or employee from authorizing the expenditure of public funds, and from approving any project, plan, permit, or conveyance of land in which a member of that body is financially interested. The bill would make a violation of these provisions a crime, thereby imposing a state-mandated local program.~~

This bill would provide that members of the Legislature, state, county, and city officers or employees shall be deemed to be financially interested in a contract if that member, officer, or employee has an independent contracting relationship with an individual or nongovernmental entity that enters, or seeks to enter, into a contract with that body that the member, officer, or employee is a member, officer, or employee of. This bill would not limit the liability of any person under specified provisions. By increasing the scope of actions that constitute a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 **SECTION 1.** Section 1090.5 is added to the Government Code,
- 2 to read:
- 3 1090.5. (a) In addition to the requirements of Section 1090,
- 4 members of the Legislature, state, county, district, and city officers
- 5 or employees shall be deemed to be financially interested in a
- 6 contract if that member, officer, or employee has an independent
- 7 contracting relationship with an individual or nongovernmental
- 8 entity that enters, or seeks to enter, into a contract with that body

1 *that the member, officer, or employee is a member, officer, or*
2 *employee of.*

3 *(b) This section shall not limit the liability of any person under*
4 *Section 1090.*

5 SECTION 1. Section 1090 of the Government Code is amended
6 to read:

7 ~~1090. (a) Members of the Legislature, state, county, district,~~
8 ~~judicial district, and city officers or employees shall not be~~
9 ~~financially interested in any contract made by them in their official~~
10 ~~capacity, or by any body or board of which they are members. Nor~~
11 ~~shall state, county, district, judicial district, and city officers or~~
12 ~~employees be purchasers at any sale or vendors at any purchase~~
13 ~~made by them in their official capacity.~~

14 As used in this article, “district” means any agency of the state
15 formed pursuant to general law or special act, for the local
16 performance of governmental or proprietary functions within
17 limited boundaries.

18 ~~(b) (1) A state, county, district, judicial district, and city officer~~
19 ~~or employee shall not authorize the expenditure of public funds,~~
20 ~~or approve or recommend approval of any project, plan, permit,~~
21 ~~or conveyance of land, regardless of whether a contract is made~~
22 ~~in furtherance of the expenditure or project, plan, permit, or~~
23 ~~conveyance, if any member of the body or board of any state,~~
24 ~~county, district, judicial district or city, or any city officer or~~
25 ~~employee is financially interested in the transaction by virtue of~~
26 ~~independent contracting by the individual or nongovernmental~~
27 ~~entity receiving either public funds or an entitlement. Any~~
28 ~~individual with a financial interest in the expenditure of public~~
29 ~~funds or approval of any project, plan, permit, or conveyance of~~
30 ~~land, is in violation of this section and shall be punishable in the~~
31 ~~manner provided in Section 1097.~~

32 ~~(2) For purposes of this subdivision, a city officer or employee~~
33 ~~shall include elected and appointed officials of the governing body~~
34 ~~and any subordinate board or commission, a city attorney, a city~~
35 ~~manager, and a department head. This subdivision shall not apply~~
36 ~~to an individual in a nonsupervisory or nonmanagerial position~~
37 ~~who is directed by a department head.~~

38 SEC. 2. Section 1091 of the Government Code is amended to
39 read:

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract, if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records at a public meeting of that body or board, and a statutory basis for classifying the interest as remote has been identified at a public meeting of the body or board, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, “remote interest” means any of the following:

(1) That of an officer or employee of a nonprofit entity exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Sec. 501(c)(3)) or a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the “real or ultimate ownership” of the contracting party.

1 (3) That of an employee or agent of the contracting party, if all
2 of the following conditions are met:

3 (A) The agency of which the person is an officer is a local public
4 agency located in a county with a population of less than 4,000,000.

5 (B) The contract is competitively bid and is not for personal
6 services.

7 (C) The employee or agent is not in a primary management
8 capacity with the contracting party, is not an officer or director of
9 the contracting party, and holds no ownership interest in the
10 contracting party.

11 (D) The contracting party has 10 or more other employees.

12 (E) The employee or agent did not directly participate in
13 formulating the bid of the contracting party.

14 (F) The contracting party is the lowest responsible bidder.

15 (4) That of a parent in the earnings of his or her minor child for
16 personal services.

17 (5) That of a landlord or tenant of the contracting party.

18 (6) That of an attorney of the contracting party or that of an
19 owner, officer, employee, or agent of a firm that renders, or has
20 rendered, service to the contracting party in the capacity of
21 stockbroker, insurance agent, insurance broker, real estate agent,
22 or real estate broker, if these individuals have not received and
23 will not receive remuneration, consideration, or a commission as
24 a result of the contract and if these individuals have an ownership
25 interest of 10 percent or more in the law practice or firm, stock
26 brokerage firm, insurance firm, or real estate firm.

27 (7) That of a member of a nonprofit corporation formed under
28 the Food and Agricultural Code or a nonprofit corporation formed
29 under the Corporations Code for the sole purpose of engaging in
30 the merchandising of agricultural products or the supplying of
31 water.

32 (8) That of a supplier of goods or services when those goods or
33 services have been supplied to the contracting party by the officer
34 for at least five years prior to his or her election or appointment
35 to office.

36 (9) That of a person subject to the provisions of Section 1090
37 in any contract or agreement entered into pursuant to the provisions
38 of the California Land Conservation Act of 1965.

39 (10) Except as provided in subdivision (b) of Section 1091.5,
40 that of a director of, or a person having an ownership interest of,

1 10 percent or more in a bank, bank holding company, or savings
2 and loan association with which a party to the contract has a
3 relationship of borrower or depositor, debtor or creditor.

4 (11) That of an engineer, geologist, or architect employed by a
5 consulting engineering or architectural firm. This paragraph applies
6 only to an employee of a consulting firm who does not serve in a
7 primary management capacity, and does not apply to an officer or
8 director of a consulting firm.

9 (12) That of an elected officer otherwise subject to Section 1090,
10 in any housing assistance payment contract entered into pursuant
11 to Section 8 of the United States Housing Act of 1937 (42 U.S.C.
12 Sec. 1437f) as amended, provided that the housing assistance
13 payment contract was in existence before Section 1090 became
14 applicable to the officer and will be renewed or extended only as
15 to the existing tenant, or, in a jurisdiction in which the rental
16 vacancy rate is less than 5 percent, as to new tenants in a unit
17 previously under a Section 8 contract. This section applies to any
18 person who became a public official on or after November 1, 1986.

19 (13) That of a person receiving salary, per diem, or
20 reimbursement for expenses from a government entity.

21 (14) That of a person owning less than 3 percent of the shares
22 of a contracting party that is a for-profit corporation, provided that
23 the ownership of the shares derived from the person's employment
24 with that corporation.

25 (15) That of a party to litigation involving the body or board of
26 which the officer is a member in connection with an agreement in
27 which all of the following apply:

28 (A) The agreement is entered into as part of a settlement of
29 litigation in which the body or board is represented by legal
30 counsel.

31 (B) After a review of the merits of the agreement and other
32 relevant facts and circumstances, a court of competent jurisdiction
33 finds that the agreement serves the public interest.

34 (C) The interested member has recused himself or herself from
35 all participation, direct or indirect, in the making of the agreement
36 on behalf of the body or board.

37 (16) That of a person who is an officer or employee of an
38 investor-owned utility that is regulated by the Public Utilities
39 Commission with respect to a contract between the investor-owned
40 utility and a state, county, district, judicial district, or city body or

1 board of which the person is a member, if the contract requires the
2 investor-owned utility to provide energy efficiency rebates or other
3 types of programs to encourage energy efficiency that benefits the
4 public when all of the following apply:

5 (A) The contract is funded by utility consumers pursuant to
6 regulations of the Public Utilities Commission.

7 (B) The contract provides no individual benefit to the person
8 that is not also provided to the public, and the investor-owned
9 utility receives no direct financial profit from the contract.

10 (C) The person has recused himself or herself from all
11 participation in making the contract on behalf of the state, county,
12 district, judicial district, or city body or board of which he or she
13 is a member.

14 (D) The contract implements a program authorized by the Public
15 Utilities Commission.

16 (c) This section is not applicable to any officer interested in a
17 contract who influences or attempts to influence another member
18 of the body or board of which he or she is a member to enter into
19 the contract.

20 (d) The willful failure of an officer to disclose the fact of his or
21 her interest in a contract pursuant to this section is punishable as
22 provided in Section 1097. That violation does not void the contract
23 unless the contracting party had knowledge of the fact of the remote
24 interest of the officer at the time the contract was executed.

25 SEC. 3. The Legislature hereby finds and declares that the
26 ethical integrity and stability of local governmental agencies in
27 this state, including charter cities and counties, has a direct impact
28 on the long-term well-being of all residents of this state. The
29 likelihood of businesses locating to, or staying in, the state is
30 affected by the perception of a functioning, transparent, and
31 practical governmental structure in the local governmental bodies
32 in the state. Therefore, the Legislature finds and declares that to
33 ensure the statewide integrity of local governments, including the
34 prohibition against financially interested transactions, is an issue
35 of statewide concern and not a municipal affair, as that term is
36 used in Section 5 of Article XI of the California Constitution.
37 Therefore, this act shall apply to every city and county in this state,
38 including a charter city, charter county, and charter city and county.

39 SEC. 4. No reimbursement is required by this act pursuant to
40 Section 6 of Article XIII B of the California Constitution because

1 the only costs that may be incurred by a local agency or school
2 district will be incurred because this act creates a new crime or
3 infraction, eliminates a crime or infraction, or changes the penalty
4 for a crime or infraction, within the meaning of Section 17556 of
5 the Government Code, or changes the definition of a crime within
6 the meaning of Section 6 of Article XIII B of the California
7 Constitution.

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